

AMERICAN PETROFINA COMPANY OF TEXAS

IBLA 83-36

Decided May 23, 1983

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting oil and gas lease offer M 54856.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents

In a simultaneous filing situation, the failure of a first-drawn applicant to file an offer in accordance with 43 CFR 3112.4-1 necessitates rejection of the offer. Where the offer form has been signed by one who is designated as an attorney-in-fact for the offeror, and it is not accompanied by a power of attorney or a reference to a qualifications file where such authorization has previously been filed, it must be rejected.

APPEARANCES: Leonard L. Hedberg, Denver, Manager of appellant, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

American Petrofina Company of Texas appeals from a decision of the Montana State Office, Bureau of Land Management (BLM), dated September 13, 1982, rejecting oil and gas lease offer M 54856 because neither a power of attorney nor reference to a serial number for a file containing such authorization was provided as required under 43 CFR 3112.4-1(b).

Appellant filed for parcel MT 33 in the March 1982 drawings for simultaneous filings and was subsequently awarded first priority. Appellant's application was signed by its vice president and assistant secretary. BLM informed appellant of its first-qualified applicant status and provided instructions for completion of the lease offer in a notice of additional

requirements dated August 17, 1982. Appellant's rental and signed lease form offer were received by BLM. The offer was signed with a handwritten signature. The words "Attorney-in-fact" were written under the signature. No reference was made to a qualifications file. BLM rejected appellant's offer because it did not comply with 43 CFR 3112.4-1(b), which requires in simultaneous filing situations where the offer is signed by an attorney-in-fact that it be accompanied by a power of attorney or reference to a serial number under which authorization for the attorney-in-fact was previously filed.

On appeal appellant states that its personnel were of the opinion that a power of attorney was on file in the BLM Billings office and that it was surprised that this matter had not been taken care of. Appellant asserts that having been advised by BLM that no power of attorney was on file, it has taken steps to rectify the situation. Appellant assures the Board that "all is in order" at the present time.

[1] 43 CFR Subpart 3112 concerns the simultaneous filings of oil and gas lease applications. Section 3112.4-1(a) states that "[t]imely receipt of the properly signed lease and rental constitutes the applicant's offer to lease" under the Departmental procedures for simultaneous filings, and mandates that "[o]nly the personal handwritten signature of the prospective lessee, or his/her attorney-in-fact as described in paragraph (b) of this section, in ink shall be accepted." The Departmental regulation at issue, section 3112.4-1(b), reads in part:

Any attorney-in-fact signing a lease offer or paying the first year's rental on behalf of the prospective lessee shall file, together with the offer and/or rental, a copy of his/her power of attorney or reference to the serial number under which such authorization is filed over the personal handwritten signature of the prospective lessee in ink.

Without providing for limited or deficient compliance, the regulation clearly states the duties of an attorney-in-fact who completes the lease offer under Subpart 3112. Failure to file an offer in accordance with section 3112.4-1 necessitates rejection of the first-qualified applicant's application. 43 CFR 3112.6-1(d).

Appellant's assurance that the power of attorney is now on file is to no avail. A noncompetitive oil and gas lease for Federal lands may be issued only to the first-qualified applicant. 30 U.S.C. § 226 (c) (1976). An oil and gas lease cannot be issued where the offer does not comply with the regulations and is therefore defective. In a simultaneous filing situation under Subpart 3112 where an oil and gas lease offer is defective, the defect is not curable, because the rights of a third party have intervened. Accordingly, the priority of the second drawee is advanced and the lease must then be offered to the first-qualified applicant who has complied with the Department's regulations which were operative and controlling at the time. See Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976);

Altex Oil Corp., 61 IBLA 270 (1982), (Altex Oil Corp. v. Watt, Civ. No. 82-0424A (D. Utah, filed Apr. 30, 1982), dismissed without prejudice October 19, 1982); Robert E. Bergman, 53 IBLA 122 (1981). To award appellant this lease despite its defective offer would be unfair to the second-and third-qualified applicants, and contrary to the regulations. Appellant has failed to establish any reason for a departure from the express and mandatory requirements of the regulations.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Will A. Irwin  
Administrative Judge

